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January 16, 2004

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation -- CC Docket Nos. 96-262, 01-92

Dear Chairman Powell:

As CEO of PAETEC Communications, Inc., ("PAETEC"), I am writing to emphasize our concern over the possible impact of the Commission's pending action on CLEC access charges, particularly regarding CMRS originating 8YY traffic carried by CLECs.

PAETEC is a national, facilities-based CLEC founded in 1998 and headquartered near Rochester, New York. PAETEC provides bundled local, long distance, data and Internet services primarily to medium-sized and larger business customers. PAETEC has enjoyed outstanding financial and commercial success. In 2003 the prestigious Deloitte *Fast 500* survey named PAETEC the second fastest growing high-technology company in North America.

For fiscal 2003, PAETEC expects to report revenues in excess of $360 million. While many other start-up telecommunications companies were going bankrupt, PAETEC continued earning enough to pay all of its vendors, creditors and employees, creating over 1,000 jobs around the country. We have now enjoyed five consecutive quarters of positive net income and free cash flow. Our results compare favorably with those of some of the best-regarded high-tech companies, including Dell, Cisco, and MCI, during their first five years.

PAETEC currently operates in 27 major metropolitan markets with plans to expand into several more markets by the end of 2004. We now serve over 10,000 business, education, and governmental organizations, representing more than a half a million access line equivalents. Our clientele includes over 300 institutions of higher education and over 1,000 healthcare and Fortune 500 companies. PAETEC's financial success is due largely to our strong emphasis on providing excellent customer service. PAETEC's customer satisfaction rates today are among the highest in the history of the telecommunications industry. Our customer retention rate exceeds 99% month to month.

Equally important, though, is our ability to minimize risk through prudent planning and cost control. We have a realistic and workable business plan. We live within our means. We set achievable budgets and work hard to manage our business within them. We own our switches and lease backbone facilities and special access lines from other carriers at economical rates. We have tried to avoid regulatory uncertainty by minimizing our reliance on controversial offerings such as DSL and UNE-P.

In the area of intercarrier compensation, we have always preferred to resolve our differences through reasonable commercial compromise rather than litigation. PAETEC successfully negotiated agreements several years ago with the large interexchange carriers for access charges, and with the major incumbent LECs for compensation on ISP-bound traffic. In both cases, these arrangements anticipated, but were superseded by, the Commission's efforts to solve these problems on an industry-wide basis.

PAETEC supports the way in which the Commission's Benchmark Order[1] addressed the problem of CLEC access charges. By clearly announcing a gradual, prospective transition, the Commission set a predictable and certain glide-path that allowed time for all parties concerned to adjust their business plans and budgets to the new regime. PAETEC has duly reduced its tariffed access charges according to the schedule established by the Benchmark Order, and we have budgeted for, and are prepared to absorb, the revenue loss associated with the final move to ILEC rates slated for June 2004.

We understand that the Commission is now focused on the fact that some CLECs are carrying 8YY traffic originating from CMRS providers and charging IXCs benchmark access rates for this traffic. PAETEC has been carrying this type of traffic since at least 1999, and currently has contractual arrangements with several CMRS providers under which we pay a commission to the CMRS provider based on the amount of access revenue collected. We have long had similar arrangements with hotels and other aggregators. Although formerly all of PAETEC's originating access traffic was routed to the IXC through an ILEC tandem, we have now established direct connections between our switches and the major IXCs. As a result, an increasing portion of the originating 8YY traffic at issue here goes from the CMRS provider to PAETEC to the IXC, without the involvement of any other LEC.

It is not my intent here to rehash all of the legal and policy arguments that have been made to the Commission on this issue in the past six weeks, and before that to the Wireline Competition Bureau. However, I do want to emphasize the following points from PAETEC's experience and perspective:

- PAETEC has carried CMRS 8YY traffic since well before the Commission issued its CLEC Benchmark Order and *Sprint PCS* decisions.[2] **This was not an "end-run" response to either of those orders.**

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[1] *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* Seventh Report & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001).
[2] *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges,* 17 FCC Rcd 13192 (2002).

- Nothing in either the Benchmark or *Sprint PCS* orders led PAETEC to believe that carrying CMRS 8YY traffic, or charging the benchmark rate for it, was impermissible. **We reasonably relied on those orders in continuing our prior practice.**[3]

- By cutting the maximum level of CLEC access charges from over 5 cents to 1.2 cents currently (with a further drop to ILEC rates scheduled for June 2004), the Benchmark Order has already drastically reduced both the incentive and ability of CLECs to engage in access arbitrage, and the effect on IXC access costs when they do. **This is a problem that the Commission has largely solved already.**

- It is PAETEC's understanding that IXCs have routinely been assessed access charges by ILECs for CMRS-originated traffic, and that in some configurations the traffic may flow from the CMRS provider to the end office of a rural ILEC (whose access rates may be several times higher than the current CLEC benchmark) and thence to a regional tandem, resulting in total access charges that are greater than in the CLEC scenario. **Singling out CLECs for adverse treatment here is unwarranted.**

Although the revenues PAETEC derives from access charges on CMRS 8YY traffic represent only a small proportion of our total revenues, the amount is significant in absolute terms. If we were required to pay back all of the money we have collected in the past on this type of traffic, it would be a serious burden to us. Moreover, while our budget for 2004, as noted above, accommodates the scheduled June reduction of CLEC access rates to ILEC levels, we did not anticipate the further revenue reduction (totaling several million dollars) associated with an abrupt prospective termination of our CMRS arrangements. Absorbing that kind of hit may require PAETEC to cancel or postpone needed network expansion or reduce employment levels. Our ability to transition out of our CMRS arrangements without serious disruption depends almost entirely on the amount of advance notice we are given.

PAETEC does not understand why this particular aspect of intercarrier compensation has reached such a crisis pitch that it needs to be addressed separate from and in advance of the remaining issues in the Unified Intercarrier Compensation proceeding. However, should the Commission find it unavoidably necessary to address the CMRS 8YY issue at this time, we urge you to handle it in the same way the Commission has successfully resolved previous intercarrier compensation disputes: through a clearly articulated, prospectively implemented transition commencing several months after the Order is effective. That transition should be preceded by a period where all in the industry can have an opportunity to develop the record fully. This would enable all companies involved to adjust their commercial arrangements, business plans and budgets in a way that avoids disruptive windfalls or penalties. It would also enhance the likelihood that the

[3] The January 9, 2004, *ex parte* filing by Verizon Wireless does a particularly good job of explaining why this reliance was reasonable. PAETEC agrees with that analysis, and commends it to the Commission's attention.

Commission's action will accomplish the dual purpose of acceptance by the industry while withstanding judicial scrutiny.

Sincerely,

Arunas A. Chesonis
Chairman and Chief Executive Officer

Copy to:

Commissioner Kathleen Abernathy
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Commissioner Michael Copps
Commissioner Kevin Martin
Mr. Matthew Brill
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